TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 774

CORINNE S. KOSHLAND, PETITIONER,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1936.

CERTIORARI GRANTED MARCH 30, 1936.

SUPREME COURT OF THE UNITED STATES

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CORINNE S. KOSHLAND, PETITIONER,

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APPEARANCES

For Taxpayer:
JOHN C. ALTMAN, Esq.

For Comm'r.:
H. D. THOMAS, Esq.,
E. M. WOOLF, Esq.

Docket No. 70917

CORINNE S. KOSHLAND,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

DOCKET ENTRIES

1933

Apr. 5—Petition received and filed Taxpayer notified. (Fee paid)

" 5—Copy of petition served on General Counsel.

Jun. 2—Answer filed by General Counsel.

" 10—Copy of answer served on taxpayer. Circuit Calendar in the vicinity of San Francisco, California.

Jul. 17—Hearing set week of 9/11/33 at San Francisco, California.

Sep. 18—Hearing had before Mr. Leech. Submitted on the merits. Stipulation of facts read into the record. Briefs due Nov. 28, 1933. No exchange.

1933

Oct. 11—Transcript of hearing of 9/18/33 filed.

Nov. 27—Brief and proposed findings of fact filed by taxpayer.

" 27—Brief filed by General Counsel.

1934

Feb. 24—Supplemental brief filed by taxpayer.

Mar. 31—Memorandum opinion rendered, J. R. Leech, Div. 6. Judgment will be entered under Rule 50.

Apr. 16—Notice of settlement filed by taxpayer. 4/18/34 copy served.

" 17—Hearing set May 9, 1934.

" 26—Notice of settlement filed by General Counsel. copy served 4/28/34.

May 9—Hearing had before Mr. J. J. Marquette, Div. 1 on settlement under Rule 50—not contested—referred to Mr. Leech for decision.

" 14—Decision entered J. R. Leech, Div. 6.

Aug. 2—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by General Counsel.

" 24—Proof of service filed by General Counsel.

Oct. 1—Motion for extension to Dec. 1, 1934 to complete and transmit record filed by General Counsel.

" 1—Order enlarging time to Dec. 1, 1934 to prepare evidence and deliver record entered.

Nov. 9—Motion re statement of evidence filed by General Counsel. Granted 11/15/34 and set for hearing 11/28/34.

1934

Nov. 9—Statement of evidence lodged.

" 9—Praecipe filed. Proof of service thereon.

" 26—Motion for extension to Feb. 1, 1935 to complete and transmit record filed by General Counsel.

" 26—Order enlarging time to Feb. 1, 1935 for preparation of evidence and delivery of record entered.

" 28—Hearing had before Mr. Leech on approval of statement of evidence. Continued to Nov. 30, 1934.

" 28—Order of continuance to Nov. 30, 1934 on approval of statement of evidence entered. [1*]

Nov. 30—Hearing had before Mr. Leech on approval of statement of evidence. C. A. V.

Dec. 1—Transcript of hearing of Nov. 30, 1934 filed.

" 4—Order that statement of evidence, submitted by Commissioner, be approved entered.

" 4—Statement of evidence approved and ordered filed. [2]

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

United States Board of Tax Appeals

Docket No. 70917

CORINNE S. KOSHLAND,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:E-2-MM R-60D) dated March 11, 1933, and as the basis of her proceedings, alleges as follows:

I.

The petitioner is an individual, with her address and residence at 3800 Washington Street, San Francisco, California. In the notice of deficiency hereinafter referred to, petitioner is erroneously designated as "Corrine S. Koshland".

II.

The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the taxpayer on March 11, 1933. The report of the Internal Revenue Agent in charge at San Francisco, California, dated September 15, 1932, was approved in said notice of deficiency and made a part thereof and accordingly, a copy of said report is attached and marked Exhibit "B".

III.

The taxes in controversy are income taxes for the [3] calendar year 1930 and for $833.48.

IV.

The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) Respondent erroneously determined that the exchange made by petitioner in 1929 to and with Transamerica Corporation, a Delaware corporation doing business in California, (hereinafter referred to as "Transamerica") of 32 shares of the capital stock of Bank of America, N. A., a national banking corporation (hereinafter referred to as "Bank") for 48 shares of the capital stock of Transamerica was a taxable transaction, when in truth and in fact this transaction was a non-taxable one, being an exchange made in connection with a reorganization as that term is defined in Section 112 of the Revenue Act of 1928. Accordingly, respondent erroneously fixed as the cost basis of said 48 shares of Transamerica the fair market value of said shares at the time of such exchange, instead of fixing as the cost basis of said shares of stock the cost basis of the 32 shares of stock of said bank.

(b) Respondent erroneously determined the cost basis and consequent profit to taxpayer in connection with the redemption during the year 1930 of 165 shares of preferred stock of Columbia Steel Corporation. In this behalf, petitioner alleges that respondent determined that the cost basis to petitioner of said 165 shares of preferred stock was the

sum of $11,505.80, whereas the correct cost basis of said shares of stock was and is $16,500.00. [4]

V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

(a) On April 18, 1928, petitioner purchased 20 shares of stock of Bank of America, N. A. at a price of $225.00 per share, or a total sum of $4500.00. In January, 1929, taxpayer, as the owner of certain shares of stock of Bank of Italy, received as a dividend thereon 12 shares of stock of Bank of America, N. A., and the market value of said 12 shares of stock of Bank of America, N. A., at date of receipt and therefore the cost basis of petitioner of said 12 shares of stock was $2316.00. The total cost to petitioner of said 32 shares of stock of Bank of America, N. A., was $6816.00. During the year 1929, taxpayer, in connection with a tax free reorganization as defined in the Revenue Act of 1928, exchanged said 32 shares of stock of Bank of America, N. A., for 48 shares of stock of Transamerica Corporation, and the proper cost basis to petitioner of said 48 shares of stock of Transamerica Corporation is the sum of $6816.00. During the year 1930 taxpayer sold said 48 shares of stock of Transamerica Corporation and in computing the gain or loss to petitioner with respect to said 48 shares of stock of Transamerica Corporation, respondent erroneously used as the cost basis thereof the sum of $6276.00, instead of the sum of $6816.00.

(b) On February 28, 1924, petitioner purchased 150 shares of preferred stock of Columbia Steel Corporation for the sum of $100.00 per share, or a total amount of $15,000.00. [5]

On March 2, 1926, petitioner purchased from said corporation 15 shares of its preferred stock for the sum of $100.00, per share, or a total amount of $1500.00.

That, pursuant to the Articles of Incorporation of said Columbia Steel Corporation during all of the times herein referred to, said shares of preferred stock were non-voting (the entire voting *rites* being vested in the shares of common stock) and had a par value of $100.00 per share and were redeemable at any time after five years from the date of incorporation at a price of $105.00 per share, plus all accumulated dividends. That Article IV of the Articles of Incorporation of said Columbia Steel Corporation at all of the times herein mentioned read as follows, insofar as appertained to the payment of dividends on said shares of preferred stock:

> "The holders of record of the shares of the preferred stock are entitled to receive dividends from and after the respective dates of issuance of such shares before any dividend shall be paid upon or set apart for the common stock as follows:
>
> At the rate of 7% per annum if the Board of Directors shall decide to pay such dividends in cash and at the rate of one share of common stock per annum on each share of preferred

stock if the Board of Directors shall have determined to pay such dividends in common stock of the corporation. Such preferred stock dividends shall be payable in semi-annual instalments on the 1st day of January and on the 1st day of July of each year. The dividends upon all of the preferred stock are cumulative, so that if any one year dividends shall not have been paid thereon, either at the rate of 7% per annum in cash or one share of common stock per annum on each share of preferred stock, the deficiency shall be paid either in cash or in stock, as aforesaid, before any dividends shall be paid upon or set apart for the common stock, and in the event of any liquidation or dissolution or winding up of the corporation, the holders of record of all the shares of the preferred stock shall be entitled, before any distribution shall be made to the holders of the common stock irrespective of the amount available to the holders of the common stock, to be paid in full the par value of [6] such shares of preferred stock, and also an amount found by deducting, from a sum equal to 7% per annum on the par value of the preferred stock from the respective dates of issuance to the date of distribution, the aggregate of the dividends which shall have been paid in cash or in common stock, computing said common stock for this purpose at $7.00 per share; and, after the payment of the amounts hereinabove specified to the holders

of record of the shares of the preferred stock they shall not be entiltled to any share or portion of the assets of the corporation. No dividends accruing after five years from the date of incorporation of this corporation on the preferred stock shall be paid in common stock."

Pursuant to the provisions of said Article IV, said corporation declared and paid in January, 1925, to the holders of record of the prefered stock of said corporation on December 31, 1924, a dividend at the rate of one share of common stock per annum on each share of preferred stock issued and outstanding during the year 1924, and declared and paid in January, 1926, to the holders of record of the preferred stock of said corporation on December 31, 1925, a dividend at the rate of one share of common stock per annum on each share of preferred stock issued and outstanding during the year 1925, and declared and paid in January, 1927, to the holders of record of the preferred stock of said corporation on December 31, 1926, a dividend at the rate of one share of common stock per annum on each share of preferred stock issued and outstanding during the year 1926, and declared and paid in July, 1927, to the holders of record of the preferred stock of said corporation on June 30, 1927, a dividend at the rate of half of a share of common stock on each share of preferred stock issued and outstanding during the half year period ending June 30, 1927.

Petitioner, as the owner of 150 shares of pre- [7] ferred stock of Columbia Steel Corporation, received

in January, 1925, 127 shares of common stock of said Columbia Steel Corporation, in payment of said cumulative annual dividend on shares of preferred stock for the year 1924, and the market value of each share of such common stock at date of such receipt was $6.50, and the cost basis to petitioner of each share of common stock received as aforesaid was not less than $6.50. Petitioner, as the owner of 150 shares of preferred stock of Columbia Steel Corporation, received in January, 1926, 150 shares of common stock of said Columbia Steel Corporation, in payment of said cumulative annual dividend on shares of preferred stock for the year 1925, and the market value of each share of such common stock at date of such receipt was $6.25, and the cost basis to petitioner of each share of common stock received as aforesaid was not less than $6.25. Petitioner, as the owner of 165 shares of preferred stock of Columbia Steel Corporation, received in January, 1927, 165 shares of common stock of said Columbia Steel Corporation, in payment of said cumulative annual dividend on shares of preferred stock for the year 1926, and the market value of each share of such common stock at the date of such receipt was $7.00, and the cost basis to petitioner of each share of common stock received as aforesaid was not less than $7.00. Petitioner, as the owner of 165 shares of preferred stock of Columbia Steel Corporation, received in July, 1927, 82½ shares of common stock of said Columbia Steel Corporation, in payment of said cumulative semi-annual dividend on shares of

preferred stock for the first half of the year 1927, and the market value [8] of each share of such common stock at date of such receipt was $7.00, and the cost basis to petitioner of each share of common stock received as aforesaid was not less than $7.00. In this behalf, petitioner sets forth that none of said shares of common stock received as aforesaid constituted a stock dividend. In this behalf, petitioner further sets forth that the exercise of the election on the part of said Columbia Steel Corporation to pay said cumulative preferred dividend in the form of common stock constituted an agreement between petitioner and said corporation whereby petitioner received $7.00 in cash as such cumulative annual dividend on each share of preferred stock held by her and used said $7.00 in cash for the contemporaneous purchase of one share of common stock from said corporation. This is confirmed by the recordance on the books of the Columbia Steel Corporation of a distribution of surplus to the preferred stockholders equivalent to $7.00 per share per annum and the corresponding increase of common stock outstanding.

Petitioner sets forth that the cost basis of the 165 shares of preferred stock of Columbia Steel Corporation acquired by her, as aforesaid is the sum of $16,500.00, and that such cost basis should not be reduced by the sum of $693.02 (representing the cost basis erroneously allocated to 127 shares of common stock received as a dividend in 1925), nor should said cost basis be reduced in the sum of

$1,108.62 (representing the cost basis erroneously allocated to 150 shares of common stock received as a dividend in 1926), nor should said cost basis be reduced in the sum of $1,129.71 (representing the cost basis erroneously allocated to 165 shares of common stock received [9] as a dividend in January, 1927); nor should said cost basis be reduced in the sum of $558.96 (representing the cost basis erroneously allocated to 82½ shares of common stock received as a dividend in July, 1927). In January, 1930, said 165 shares of preferred stock of Columbia Steel Corporation were redeemed for the sum of $17,325.00, and by reason thereof, petitioner realized a profit of $825.00, and no more.

VI.

During the year 1931, petitioner paid to the Collector of Internal Revenue at San Francisco, California, the sum of $1388.06, as and for income taxes for the calendar year 1930.

WHEREFORE, petitioner prays that this Board may hear the proceeding and determine that there is no deficiency in income taxes herein, and for such other relief as may be meet and proper in the premises.

JOHN C. ALTMAN
B. H. HICKLIN, C.P.A.
Counsel for Petitioner.
615 Russ Building,
San Francisco, Calif. [10]

State of California,
City and County of San Francisco.—ss.

CORINNE S. KOSHLAND, being duly sworn, says: That she is the petitioner named in the foregoing petition and is familiar with the statements therein contained and that the facts therein stated are true.

CORINNE S. KOSHLAND

Subscribed and sworn to before me this 31st day of March, 1933.

[Seal] LOUIS WIENER
Notary Public in and for the City and County of San Francisco, State of California. [11]

EXHIBIT "A"

NP-2-28

TREASURY DEPARTMENT
Washington

Mar 11, 1933

Office of
Commissioner of Internal Revenue
Address Reply to
Commissioner of Internal Revenue
And Refer to
Mrs. Corrine S. Koshland,
3800 Washington Street,
San Francisco, California.

Madam:

You are advised that the determination of your tax liability for the year 1930 discloses a deficiency of $833.48, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the inclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the inclosed form, or on the date assessment is made, whichever is earlier; WHEREAS IF THIS FORM IS NOT FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,

Commissioner

By W. T. SHERWOOD,

Acting Deputy Commissioner

Inclosures:

Statement

Form 870 [12]

STATEMENT

IT:AR:E-2
MMR-60D

In re: Mrs. Corrine S. Koshland
3800 Washington Street,
San Francisco, California

Income Tax Liability

Year—1930
Income Tax Liability—$2,221.54
Income Tax Assessed—$1,388.06
Deficiency—$833.48

The report of the internal revenue agent in charge at San Francisco, California, a copy of which was furnished you, is approved and is hereby made a part of this letter.

Careful consideration has been accorded your protest dated November 1, 1932, in connection with the findings of the examining officer, and the information submitted at a conference held in the office of the internal revenue agent in charge. [13]

EXHIBIT "B"

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

San Francisco, Calif.

In re: Income Tax
Date of report: Sep. 15, 1932

Corinne S. Koshland,
3800 Washington St.,
San Francisco, Calif.

Years—1930
Additional Tax—$833.48
Overassessment—
Penalties—
Total—

The recommendations which this office proposes to make with respect to your income tax liability as the result of a recent examination by an internal revenue agent are shown in the statement attached.

If you acquiesce in the proposed tax liability the inclosed Form 870 should be executed and forwarded to this office. Your consent on Form 870 to the prompt assessment of any deficiency indicated will stop the running of interest to be assessed on such deficiency under the provisions of section 283(d) of the Revenue Act of 1926 or section 292 of the Revenue Act of 1928, upon a date not later than thirty days after the filing of Form 870 properly executed. Unless such consent is filed the interest to be assessed under the law upon any deficiency indicated runs to the date the deficiency is

assessed and the assessment may be made only as provided by Section 274(a) of the Revenue Act of 1926 and/or section 272(a) of the Revenue Act of 1928.

Should you desire to make immediate payment without awaiting formal assessment and notice and demand, you should communicate with the collector of internal revenue at Custom House, San Francisco, inclosing this letter, or a copy thereof. If payment is so made the interest period will terminate on the date of payment.

If you do not acquiesce in the proposed recommendations you should file a protest in writing with this office within 20 days from the date of this letter. Any protest so filed will be given careful consideration, and, if you so desire, you will be given an opportunity for a hearing before the recommendations are forwarded to Washington.

Arrangements will be made by this office upon your request to answer any questions which may occur to you in your review of these recommendations.

In any event please sign the inclosed form acknowledging receipt of this letter and related papers and return such form to this office.

Respectfully,

B. W. WILDE, JR.,
Internal Revenue Agent in Charge.

Inclosures:

Statement of adjustments
Form 870
Form of acknowledgment. [14]

Name Corinne S. Koshland

STATEMENT OF TOTAL TAX LIABILITY

Year—1930

Tax Previously Assessed—$1,388.06

Adjustments proposed in Accompanying Report

Deficiency—$833.48

Overassessment—None

Correct Tax Liability—$2,221.54

Totals— [15]

Preliminary Statement

Taxpayer: Corinne S. Koshland

Examining Officer: M. Surryhne

Table of Contents

Schedule 1, Block Adjustments

2, Computation of Tax

Exhibit A, Cost of Transamerica

B, do of Columbia Steel

Principal cause of additional tax: Adjustment of cost of Transamerica and of Columbia Steel.

All changes were discussed with Mr. Redman, who does not concede the method of adjusting cost of Columbia Steel.

Taxpayer: Single, with no dependents.

Related cases: None [16]

Corinne S. Koshland

Schedule 1
Block Adjustments

	Return	Additions	Deductions	Corrected
3. Interest	3,517.00	a. 219.44		3,736.44
4. " 2% paid	3,924.44		a. 219.44	3,705.00
7. Rents	28,110.79			28,110.79
8. Profit from Sales	(30,137.93)	b. 9,174.26		(20,963.67)
9. Lib. Bd. Int.	297.50			297.50
10. Dividends	59,641.46			59,641.46
11. Other Income	365.93			365.93
12. Total Income	$65,719.19			$74,893.45
13. Interest	16,989.42			16,989.42
14. Taxes	4,384.87			4,384.87
17. Contributions	6,470.39		c. 1,376.13	7,846.52
18. Other deductions	1,209.00			1,209.00
19. Total do	$29,053.68			$30,429.81
Total Income	$36,665.51	(9,393.20)	(1,595.57)	44,463.64

Schedule 1-a
Explanation of Items

a. Included on Line 4 is interest of $219.44, received on bonds at time of sale which is transferred to Line 3, as no tax was paid at source.

b. The cost of securities sold was overstated as follows:

Transamerica (See Exhibit A)	$8,380.06
Columbia Steel (do B)	794.20
Total	$ 9,174.26

c. The deduction for contributions is adjusted as follows:

Income reported	$36,665.51
Addition line 18	9,174.26
Contributions deducted	6,470.39
Total before deduction for contributions	$52,310.16
15% above	7,846.52
Amount deducted	6,470.39
Difference	$ 1,376.13

Corinne S. Koshland

Schedule 2

Year ended 12-31-30

Computation of Tax

Net income from schedule 1		44,463.64
Less: Dividends	$59,641.46	
Interest on Lib. Bonds, etc.	297.50	
Personal exemption and credit dependents	1,500.00	61,438.96
Balance subject to normal tax		None
Surtax on $44,463.64	2,295.64	
		2,295.64
Less: Credit for earned net income from schedule,	None	
Income tax paid at source	74.10	74.10
Total tax assessable		$ 2,221.54
Tax previously assessed		1,388.06
Additional tax to be assessed		$ 833.48

[18]

Corinne S. Koshland

Exhibit A

Cost of Transamerica

		Net cost	Shares sold 1930
		No.	Cost
Bank of Italy purchase	25	11,418.75	
do subn.	10	4,500.00	
rites		.90	
do purchase	40	21,640.00	
Exchanged for B. of I.	300	37,559.65	
Sk. Div.	75		
Subn.	62	11,160.00	
Exchanged for Transamerica			764¾ 48,719.65
Purchased do			¼ 31.25
Bancitaly purchased	10	850.00	
do subn.	22	2,200.00	
" rites		32.80	
" sk. div.	12.8		
" purchased	.2	18.	
" Sk. div.	6 3/7		
Sold	3/7	(26.04)	
Exchanged for Transamerica			51 3,076.74
Received in exchange for Bank of America 2-25-29			48 6,276.00
Market value $130.75			
Apr. 25, 1929 Sk. Div.			8
July 25, 1929 do.			8
Sept. 25, 1929 "			1,320
Oct. do			22
Jan. 1930 "			22
Total sold			2,244 58,103.64
Cost reported			66,483.70
Difference			$ 8,380.06

[19]

Corinne S. Koshland

Exhibit B

Cost of Columbia Steel Pfd.

		Com.		Pfd.	
		No.	Cost	No.	Cost
1 Feb. 28, 1924, pur for	$15,000	750	$ 825.00	150	14,175.
Jan. 31, 1925, Sk. Div. on pfd. in com.	4.889%	127	693.02		(693.02)
Jan. 30, 1926, Sk. Div. on pfd. incom.	8.223%	150	1,108.62		(1,108.62)
2. Mar. 2, 1926, pur for	$ 4,500	750	3,678.89	15	821.11
Feb. 1, 1927, Sk. Div. on pfd. incom.	8.562%	165	1,129.71		(1,129.71)
Jan. 31, 1928, Sk. Div. on pfd. incom.	4.632%	82½	558.96		(558.96)
Total cost pfd.				165	11,505.80
Cost reported					12,300.00
Difference					794.20
1. Cost allocated on basis of market	com.		1.10		
	pfd.		94.50		
2. do	com.		6.25 x 50	312.50	81,753%
	pfd.		69.75 x 1	69.75	18247%

3. The only common that is shown is that which effects the pfd.

[Endorsed]: Filed Apr. 5, 1933. [20]

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits, denies and avers as follows:

I. Admits the allegations contained in paragraph I of the petition.

II. Admits the allegations contained in paragraph II of the petition.

III. Admits that the taxes in controversy are income taxes for the calendar year 1930. Denies that the amount in controversy is as alleged in paragraph III of the petition.

IV(a) & (b). Denies that the Commissioner erred as alleged in paragraph IV, sub-paragraphs (a) and (b), of the petition.

(c). Avers that in determining the net taxable income set up in Exhibit B of the petition the Commissioner allowed the sum of $7,846.52 (which sum represents 15% of the amount which the Commissioner determined to be petitioner's net income before deducting contributions) as a deduction on account of contributions, and that if the Board determines that petitioner's net income before deducting contributions is less than the amount determined by the Commissioner, the deduction for contributions should be reduced by 15% of such decrease. [21]

V(a). Admits that the petitioner was the owner of 32 shares of stock of Bank of America, N. A. Admits that prior to the year 1930 said shares of stock were exchanged for 48 shares of stock of Transamerica Corporation. Admits that during the year 1930 petitioner sold said 48 shares of stock of the Transamerica Corporation. Admits that in computing the gain or loss to petitioner with respect to said 48 shares of stock of said Transamerica Corporation the Commissioner used as the cost or other basis thereof the sum of $6,276.00. Avers that peti-

tioner is estopped from claiming a cost or other basis for said stock exceeding the sum of $4,500, in that if petitioner did receive in the year 1929 12 shares of said stock from the Bank of Italy as alleged in the petition the fair market value of said 12 shares of stock was not reported by the petitioner on her 1929 income tax return as a taxable dividend. Denies all other allegations contained in sub-paragraph (a) of paragraph V of the petition.

(b). Admits that in January 1930 165 shares of preferred stock of the Columbia Steel Corporation owned by the petitioner were redeemed for the sum of $17,325. Denies all other allegations contained in sub-paragraph (b) of paragraph V of the petition.

Avers that the petitioner is estopped from claiming a cost or other basis exceeding the sum of $11,505.80 for said 165 shares of preferred stock in that the alleged dividends of January 1925, January 1926, January 1927 and July 1927 were not reported as income on petitioner's 1925, 1926 and 1927 income tax returns. [22]

Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the Board redetermine the deficiency for the calendar year 1930 to be equal to the amount determined by the Commissioner, viz. $833.48.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:

F. R. SHEARER,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: Jun. 2, 1933. [23]

[Title of Court and Cause.]

John C. Altman, Esq., for the petitioner.
H. D. Thomas, Esq., for the respondent.

MEMORANDUM OPINION.

LEECH: This proceeding seeks redetermination of a deficiency determined in the amount of $833.48 for the calendar year 1930. Two errors are assigned but one of these was abandoned by the petitioner on the hearing. The remaining issue presents the question of the cost basis, for determination of gain or loss upon the redemption in 1930 for $17,325, of 165 shares of preferred stock of the Columbia Steel Corporation, belonging to petitioner.

Petitioner is a resident of San Francisco, California. The Columbia Steel Corporation, a Delaware corporation, was organized in November, 1922, with an authorized capitalization of 100,000 shares of preferred stock of a par value of $100 per share, and 1,000,000 shares of no [24] par value common stock. Upon organization the corporation acquired, from W. E. Creed, certain properties in consideration of the issuance to him of 39,918.42 shares of its preferred and 547,500 shares of its common stock.

The additional preferred stock of the corporation was offered to the public at par and Creed offered to certain prospective purchasers of this preferred stock, five shares of his common stock for each share of preferred stock they might purchase from the corporation. Petitioner, under this offer, subscribed for 150 shares of preferred stock at par and paid the corporation the sum of $15,000. In subscribing for this stock petitioner understood that she was to receive 150 shares of preferred stock from the corporation and 750 shares of common stock from Creed. This common stock was issued petitioner as agreed upon.

The charter of the corporation authorized the payment of the 7 per cent dividends on the preferred stock, for the first five years of operation, in common stock of the corporation at the rate of one share for each share of preferred. Under this authority the directors declared dividends upon the preferred stock, payable in common stock at the prescribed rate, for the years 1925, 1926, 1927 and 1928. In each of these years the surplus of the corporation was in excess of a 7 per cent dividend upon the issued preferred stock, and, upon the issuance of common stock as a dividend, surplus was, in each instance, debited with an amount at the rate of $7.00 for each share of stock issued and the same amount credited to the common stock account.

In January, 1926, the corporation offered to its stockholders of record the right to subscribe for a specified number of shares of preferred and [25]

common stock in units of one share of preferred and 50 shares of common stock for a price of $300 per unit. Petitioner availed herself of this right and purchased from the corporation 15 units, consisting of 15 shares of preferred stock and 750 shares of common stock.

Petitioner, as the owner of shares of preferred stock of the corporation received shares of common stock representing dividends paid in common stock as follows:

January, 1925	127	shares	common	stock
January, 1926	150	"	"	"
January, 1927	165	"	"	"
January, 1928	82½	"	"	"

During the year 1930, petitioner received the sum of $17,325 in redemption of her 165 shares of preferred stock of the Columbia Steel Corporation. She did not report on her income tax returns for the years 1926 to 1928, inclusive, any amounts as representing the dividends received by her, in common stock of the corporation in those years.

Respondent, in determining the deficiency, appealed from, has treated the original acquisition by petitioner of 150 shares of preferred and 750 shares of common stock, as the purchase of these two blocks of stock for a consideration of $15,000, and has apportioned the sum, paid by petitioner, to the common as well as the preferred stock, on the basis of the relative fair market value of each at the time of acquisition. Respondent has also treated

the dividends received by petitioner in common stock as stock dividends, allocating to the common stock received, in each instance, a proportionate amount of the cost of the preferred stock upon which it was paid. This action has decreased the cost basis of the preferred stock and increased the profit resulting from its redemption. Respondent has also, in determining [26] a cost basis for the 15 shares of preferred stock purchased by petitioner in the exercise of her stock rights, as hereinbefore set out, allocated a proportionate amount of the total payment made for the united of preferred and common stock, to each such class of stock, on the basis of the fair market value of each class of stock at the time of purchase.

Petitioner does not contest the correctness of respondent's determination as to the values of the common stock at the time of the several transactions hereinbefore detailed. She contends that the 150 shares of preferred stock, originally acquired, had a cost basis of $15,000, the 750 shares of common stock received from Creed being in effect a gift, and, that the dividends received by her on her preferred stock, paid in common stock of the corporation, were the equivalent of cash dividends and, consequently, did not reduce the cost basis of the preferred stock. Petitioner urges further that the 15 shares of the preferred stock purchased by her in the exercise of her stock rights had a cost of $100 per share, as the total amount paid for each unit subscribed for should have been allocated, not upon the basis of

the market value of the two classes of stock acquired, but on the basis of $100 for each share of preferred, the balance being the cost of the common stock.

We think it clear that, irrespective of the fact that petitioner acquired her original 750 shares of common stock of the corporation from Creed, and although the total consideration paid by petitioner passed to the corporation, such consideration, in so far as petitioner is concerned, represents the consideration paid by her and therefore the cost to her of both the [27] preferred and common stock acquired. It is undoubtedly true that it was petitioner's intention to acquire 150 shares of preferred and 750 shares of common stock. The only payment was to the corporation but the result of the payment entitled her to receive the common as well as the preferred stock. She would not be entitled to the common stock unless she made such payment. The circumstances of the transaction show clearly that the transfer to her of these 750 shares of common stock by Creed was in no sense a gift, but was in consideration of the payment of $15,000 to the corporation. We think that respondent was correct in holding that, as to this petitioner, the payment made by her of $15,000, represented her cost of the two blocks of stock, common and preferred, which she was entitled to and did receive under the agreements made by her with the corporation and Creed.

The petitioner, in respect to the question of the dividends paid in common stock, relies upon the

Tilotson Manufacturing Co., 27 B. T. A. 913. Respondent attempts to differentiate this case on the facts established in the present record. He calls attention to the fact that the dividend paid in common stock was paid under authority of the charter of the corporation. We see no material distinction in that fact. Whether the action of the directors in paying the preferred dividend in common stock was taken under general or specific authority of the charter or under authority granted by the stockholders is immaterial. Respondent further calls attention to the fact that, under the charter of the corporation, the right existed in the holders of preferred stock to convert within a certain period of years, such [28] stock into common stock of the corporation at the rate of 10 shares of common for each share of preferred. He urges that this provision, in effect, makes the preferred stock merely a right to receive common stock and, therefore, not a distinct and separate type of security with rights different from those possessed by the common stock.

With this, we do not agree. Even though the right to convert the preferred stock into common stock existed, the exercise of this right was optional with the stockholder and, if not exercised, the preferred stock remained as such, with rights not possessed by the common stock and different also in that it lacked the voting rights pertaining to the common stock.

After a careful examination of the Tilotson case, supra, we are of the opinion that the question is

controlled by that case, as contended by petitioner, and that the dividends received in common stock did not constitute stock dividends representing the mere dilution of the stockholders' present interest, but were taxable dividends which did not serve to reduce the cost basis of the preferred stock upon which they were paid.

Respondent argues that petitioner is estopped to raise this question by reason of the fact that she has failed to include these dividends in income for the years in which paid. This contention is without merit. There is no indication of deception practiced nor any wrongful act by petitioner, upon which respondent relies, in so treating these dividends on preferred stock. The method with which petitioner treated these dividends in making her returns for the four years in question was the treatment approved by respondent in those years. C. B. IX-1, page 144; C. B. VIII-132. It [29] is clear that there is no ground for an estoppel of petitioner to raise the question here presented. Ohio Brass Co., 17 B. T. A. 1199; United States Trust Co., 13 B. T. A. 1074; Summerfield Co., 29 B. T. A. 77. Cf. Tidewater Oil Co., promulgated February 27, 1934.

In reference to the 15 shares of stock acquired by petitioner as parts of 15 units of preferred and common stock purchased at $300 per unit, it is clear, we think, that the unit cost must be allocated to the two stocks composing such unit, on the basis of the market value of each stock at the time acquired by petitioner, which is the basis used by respondent.

We are concerned with what petitioner received for the payment made by her and this is not controlled by the bookkeeping of the seller in its recording of her payment upon its books in the sum of $100 for each share of preferred stock and $4.00 per share of each share of common stock. The stock was purchased in units, one share of preferred and 50 shares of common. It was sold only in this way and, consequently, what petitioner received were two blocks of stock for a payment of $300 for each unit. Upon this point we sustain the respondent.

Enter:

Judgment will be entered under Rule 50.

[Seal]

[Endorsed]: Entered Mar. 31, 1934. [30]

United States Board of Tax Appeals

Docket No. 70917

CORINNE S. KOSHLAND,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

The parties hereto have, under Rule 50, each filed a notice of settlement accompanied by a recomputation of deficiency as in accord with the Memorandum Opinion entered herein March 31, 1934,

and the deficiency as recomputed by each being in the same amount and correct, it is hereby

ORDERED AND DECREED that for the calendar year 1930 there is a deficiency of $502.50

Enter:

[Seal] (Signed) J. RUSSELL LEECH
Member.

Washington, D. C.

[Endorsed]: Entered May 14, 1934. [31]

[Title of Court and Cause.]

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

NOW COMES, Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, and Harold D. Thomas, Special Attorney, Bureau of Internal Revenue, and respectfully shows:

I.

Petitioner on review (hereinafter referred to as the Commissioner) is the duly appointed qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States. The respondent on review is an individual residing in San Francisco,

California, and filed her Federal income tax return for the year 1930 involved herein with the Collector of Internal Revenue for the First District of California at San Francisco, California, and the office of said Collector is located within the judicial circuit of the United States Circuit Court of Appeals for the Ninth Circuit. [32]

II.

The nature of the controversy is as follows:

Respondent on review was the owner of 165 shares of preferred stock of the Columbia Steel Corporation, of which 150 shares had been acquired by her by purchase on February 28, 1924, and 15 shares by purchase on March 2, 1926. As the holder of preferred stock she received her pro rata share of common stock distributed by the corporation in each of the years 1925 to 1928 inclusive, as dividends on the preferred stock. During the taxable year 1930 she received $17,325.00 in redemption of her 165 shares of preferred stock. In determining the profit on the redemption the Commissioner reduced or diminished the original cost basis of such preferred shares by reason of the receipt of the shares of common stock as dividends thereon on the theory that such distributions of common stock were stock dividends, that the original investment is represented not only by the preferred shares but also by the common shares, and that the cost should be apportioned partly to the preferred and partly to the common shares with the result that only the amount apportioned to the preferred shares may be used in determining taxable profit on the redemption of the

latter. The apportionment was made on the basis of the respective values of the preferred stock and common stock at the time of receipt of the latter.

The Commissioner, pursuant to Section 272 of the Revenue Act of 1928, notified Corinne S. Koshland, respondent on review, of his determination of income tax liability for the year 1930 and the respondent on review duly filed a petition with the United States Board of Tax Appeals from the Commissioner's determination for said year. The proceeding was duly heard before the Board. The Board's opinion was promulgated on March 31, 1934, and its decision fixing the amount of tax liability pursuant to the opinion was [33] entered on May 14, 1934.

The Board decided that Corinne S. Koshland, the taxpayer, was entitled to use the original purchase price of the 165 shares as cost in determining profit on the redemption of said shares, while the Commissioner contends that such purchase price should be diminished by apportioning a part of same to the common stock received as dividends on the preferred stock. The aggregate amount which the Commissioner apportioned to the common stock and by which he reduced the original purchase price of the preferred stock was $3,490.31. There is no issue presented as to the amount or basis of apportionment, if apportionment is correct in principle. The Commissioner also contends that the taxpayer, Corinne S. Koshland, is estopped from claiming that no part of the original purchase price should

be apportioned to the common stock received by her by reason of her holdings of preferred stock.

III.

The said Commissioner's assignments of error are as follows:

1. The Board of Tax Appeals erred in holding and deciding that dividends in shares of common stock paid by Columbia Steel Corporation on its preferred stock did not constitute stock dividends.

2. The Board erred in not holding and deciding that dividends in shares of common stock paid by the Columbia Steel Corporation on its preferred stock constituted stock dividends.

3. The Board erred in holding and deciding that, in determining profit on the disposition by the taxpayer in 1930 of her 165 shares of preferred stock of the Columbia Steel Corporation, the cost basis of the preferred stock should not be reduced by reason of dividends thereon received by her in prior years in shares of common stock. [34]

4. The Board erred in not holding and deciding that, in determining profit on the disposition by taxpayer in 1930 of her 165 shares of preferred stock of the Columbia Steel Corporation, the cost basis of the preferred stock should be reduced by reason of dividends thereon received by her in prior years in shares of common stock.

5. The Board erred in failing to find that during the first five years of the existence of the Columbia Steel Corporation the holder of preferred stock

could convert such preferred stock into common stock at the rate of ten shares of common for each share of preferred.

6. The Board erred in holding and deciding that none of the original cost basis of taxpayer's preferred stock of the Columbia Steel Corporation should be allocated to the shares of common stock which she received in prior years as dividends on the preferred stock.

7. The Board erred in not holding and deciding that part of the original cost basis of taxpayer's preferred stock of the Columbia Steel Corporation should be allocated to the shares of common stock which she received in prior years as dividends on the preferred stock.

8. The Board erred in holding and deciding that petitioner was entitled to use a cost basis of shares of preferred stock undiminished by reason of the receipt in prior years of shares of common stock as dividends on preferred stock.

9. The Board erred in not holding and deciding that taxpayer was not entitled to use a cost basis of shares of preferred stock undiminished by reason of the receipt in prior years of shares of common stock as dividends on preferred stock. [35]

10. The Board erred in failing to find that the dividends on preferred stock paid in common stock were designated on the books of the Columbia Steel Corporation as stock dividends.

11. The Board erred in holding and deciding that the receipt by the taxpayer of shares of com-

mon stock of Columbia Steel Corporation by reason of her ownership of preferred shares does not affect the cost basis of the preferred shares in determining profit on the disposition of the latter.

12. The Board erred in not holding and deciding that the receipt by the taxpayer of shares of the Columbia Steel Corporation by reason of her ownership of preferred shares affects the cost basis of the preferred shares in determining profit on the disposition of the latter.

13. The Board erred in not holding and deciding that the taxpayer failed to prove that the distributions of common stock were not proportional redistributions of existing rights and interests of the stockholders.

14. The Board erred in holding and deciding that taxpayer was not estopped from claiming that the cost basis of the shares of preferred stock should not be reduced by reason of the receipt by her of shares of common stock of Columbia Steel Corporation as dividends on the preferred stock.

15. The Board erred in not holding and deciding that taxpayer was estopped from claiming that the cost basis of the shares of preferred stock should not be reduced by reason of the receipt by her of shares of common stock of Columbia Steel Corporation as dividends on the preferred stock.

16. The Board erred in holding and deciding that there is a deficiency [36] in taxes for 1930 of only $502.50.

17. The Board erred in not holding and deciding that there is a deficiency in taxes for 1930 of $833.48.

WHEREFORE, the Commissioner petitions that the decision of the Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Sgd) FRANK J. WIDEMAN,
Assistant Attorney General,
(Signed) ROBERT H. JACKSON,
Assistant General Counsel
for the
Bureau of Internal Revenue.

Of Counsel:
HAROLD D. THOMAS,
Special Attorney,
Bureau of Internal Revenue.

United States of America,
District of Columbia.—ss.

HAROLD D. THOMAS, being duly sworn, says that he is Special Attorney in the office of the Assistant General Counsel for the Bureau of Internal Revenue and as such is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own

knowledge except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

(Sgd) HAROLD D. THOMAS

Sworn and subscribed to before me this 28 day of July, 1934.

(Sgd) MARCELLETTE M. TAYLOR
Notary Public.

My Commission expires March 31, 1935.

[Endorsed]: Filed Aug. 2, 1934. [37]

[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR REVIEW.

To:

Corinne S. Koshland,
3800 Washington Street,
San Francisco, California.

John C. Altman, Esq.,
615 Russ Building,
San Francisco, California.

You are hereby notified that the Commissioner of Internal Revenue did, on the 2nd day of August, 1934, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled

case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 3rd day of August, 1934.

(Signed) ROBERT H. JACKSON,
Assistant General Counsel
for the
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 13 day of August, 1934.

(Sgd) CORINNE S. KOSHLAND,
Respondent on Review.

(Sgd) JOHN C. ALTMAN,
Attorney for Respondent on Review.

[Endorsed]: Filed Aug. 24, 1934. [38]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE.

The following is a statement of evidence in narrative form in the above-entitled cause. This cause came on for hearing before the Honorable J. Russell Leech, Member of the United States Board of Tax Appeals, on September 18, 1933. John C. Altman, Esq., appeared for the petitioner and E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, appeared for the respondent.

LOUIS SLOSS, JR.

was called as a witness by and on behalf of the petitioner and having been first duly sworn testified as follows:

Direct Examination.

From February 1923 through the year 1928 I was either assistant secretary or secretary of the Columbia Steel Corporation. I am a son-in-law of the petitioner in this action, Corinne S. Koshland. In 1924 the petitioner purchased 150 shares of preferred stock of the Columbia Steel Corporation for which she paid par, $100 a share, a total of $15,000. I was in charge of the stock sales and the stock records at that time and I was familiar in the years 1923 and 1924 with the general set-up, the stock set-up and sales of Columbia Steel Corporation.

Whereupon the witness identified the signature of John D. Fenstermacher, secretary, to the minutes of a meeting of the stockholders of the Columbia [39] Steel Corporation on January 29, 1923 and without objection said minutes were received in evidence as Petitioner's Exhibit No. 1 with privilege of substituting a photostatic copy or another copy thereof. (Photostatic copy of said exhibit attached hereto) [Set out herein at p. 59.] The witness then identified the signature of Mr. Fenstermacher to the minutes of a special meeting of the board of directors of the Columbia Steel Corporation held on January 5, 1925; and also the minutes of a special

(Testimony of Louis Sloss, Jr.)

meeting of the board of directors held on February 18, 1926. Without objection said minutes were received in evidence as Petitioner's Exhibits Nos. 2 & 3 respectively, with right to substitute photostatic copies therefor. (Photostatic copies of said exhibits attached hereto) [Set out herein at pp. 65, 69.] The witness then identified his signature, as secretary, to the minutes of a meeting of the board of directors held on January 17, 1927 and also the minutes of a meeting of the board of directors held on December 19, 1927 and without objection said minutes were received in evidence as petitioner's Exhibits Nos. 4 & 5 respectively, with right to substitute photostatic copies of said exhibits and of any further exhibits. (Photostatic copies of said exhibits attached hereto) [Set out herein at pp. 75, 77.]

The witness then identified Mr. Fenstermacher's signature to the minutes of a meeting of the board of directors held on February 19, 1923, and without objection said minutes, together with the form of certificates for common stock and preferred stock appended thereto and referred to therein was received in evidence as Petitioner's Exhibit No. 6. (Photostatic copy of said exhibit attached hereto) [Set out herein at p. 83.]

The witness on direct examination testified further as follows:

I personally handled the matter of the purchase of these 150 shares of stock in 1924 on behalf of Mrs. Koshland and I arranged for the payment of the $15,000. Mrs. Koshland paid $15,000 to the

(Testimony of Louis Sloss, Jr.)

Columbia Steel Corporation for the 150 shares of stock, $100 a share. As to the source from which Mrs. Koshland received the 750 shares of common stock of the Columbia Steel Corporation, [40] those shares were a portion of the shares allotted to Mr. W. E. Creed by the Columbia Steel Corporation for turning in certain property to the company, the properties of the old Columbia Steel Company, of the Utah Coal & Coke Co., some iron mining property in Utah, and so on. Mrs. Koshland did not have any interest in these various properties Mr. Creed turned over.

Cross Examination.

On cross examination the witness testified as follows:

The Columbia Steel Corporation was formed in the latter part of 1922. Mr. Creed turned over some properties to the corporation and got some stock for it. I know something else about the Columbia Steel Corporation and who all was interested in it. Mr. Creed was the only one who got stock in that particular way. These were some subscribers to stock of the Columbia Steel Corporation on a cash basis and there were former stockholders of the old Columbia Steel. As to whether it was a reorganization, the old Columbia Steel Company was at Pittsburg, California. When the Columbia Steel Corporation was formed it was their idea to go back to the raw materials, making pig iron and changing the pig iron to commercial iron and then proceed-

(Testimony of Louis Sloss, Jr.)

ing with the manufacture. Mr. Creed had an interest in the old Columbia Steel; he was the largest stockholder or the second largest. As to the source of these properties, they had been presented to him by the promoters and he conceived the idea of putting them together. The idea had been given to him and he had contracts covering those properties. When the new company was formed they did not attempt to sell any common stock on the open market; no common stock was sold at all. Mrs. Koshland paid $15,000 to the Columbia Steel Corporation knowing that she was going to get some common stock from Mr. Creed. This same idea was followed out with respect to other subscribers to stock. That is, they would [41] subscribe to some stock and pay over to the corporation a certain amount of money, knowing that they were going to get some preferred stock in the corporation and some common stock from Mr. Creed. The way in which these transactions were carried out was a means of raising new capital. The only common stock which was issued at that time was that which was issued in conjunction with the preferred stock. The company was authorized to issue to Mr. Creek or his nominees, I think it read that way, a certain number of shares of common stock. That was the only common stock that was issued, and upon each purchase of preferred stock Mr. Creed would nominate or name the person to whom that common stock was to go. I want to make this explanation in that regard, that there

(Testimony of Louis Sloss, Jr.)

was common issued in a like manner also to the holders of the old Columbia Steel Company stock who received preferred stock in exchange for the other stock and they received a lesser amount of common stock with each share of preferred. There was only one stock in the old Columbia Steel; that was common stock. They turned their stock in and I believe they received six shares of preferred stock of the Columbia Steel Corporation for each share of stock which they held in the old company. Immediately after the formation of the new Columbia Steel, the preferred stockholders of the company and the common stockholders were approximately the same persons. I believe there was some of the common stock that went for promotion services to one of the Utah men; generally speaking they were the same. As to whether generally speaking each preferred stockholder held so many shares of common stock, I would say there were no preferred members who did not hold any common, but they did not hold it in the same proportion, because some got five shares for each share of preferred and some two shares for each share of preferred. In my testimony as to Mrs. Koshland's purchase of preferred stock for $100 a [42] share, I am referring to what the books show; I am referring to the cash transaction. The corporation didn't have the common; that was already allocated to Mr. Creed. She paid the money in to the corporation, knowing she was going to get so many preferred

(Testimony of Louis Sloss, Jr.)

shares issued by the corporation and so many shares of common to be turned over to her by Mr. Creed.

Redirect Examination.

Upon redirect examination the witness identified the signature of Mr. Fenstermacher, as secretary, to the minutes of a meeting of the board of directors of the Columbia Steel Corporation held on January 29, 1923 and without objection the minutes were received in evidence as Petitioner's Exhibit No. 7 with leave to substitute a photostatic copy thereof. (Photostatic copy of said exhibit attached hereto) [Set out herein at p. 90.]

The witness upon redirect examination testified further as follows:

From the minutes of the meeting of the directors of January 29, 1923 I am able to state that the 750 shares of common stock which Mrs. Koshland received came out of the 547,500 common shares authorized at the meeting to be issued to Mr. Creed, the minutes also authorizing the issuance to Mr. Creed of 39,918.43 shares of preferred stock. I am able to state this because there were no other shares of common stock issued at that time. In other words, that 547,500 shares of common stock were received by Mr. Creed from the corporation in exchange for the transfer of certain stipulated tangible property.

Recross Examination.

Upon recross examination the witness testified:

Mr. Creed was a large stockholder of both the old Columbia Steel and the new Columbia Steel. There

(Testimony of Louis Sloss, Jr.)

may have been one larger stockholder. He owned about 7 or 8 per cent of the securities or stock of the new company. As a [43] substantial stockholder, Mr. Creed was interested in raising additional capital. He was the active head of the company. As regards the old Columbia Steel Company I suppose Mr. Creed was acting for himself and other of the stockholders because he would not have had all the stock available unless he had the consent of the other stockholders. The properties for which stock was issued to Mr. Creed consisted of a mill at Pittsburg, California, and a foundry also at Pittsburg, California, in which steel castings and steel reinforcement bars and so forth were made. The properties of the Utah Coal & Coke Company were located in Carbon County, Utah; the iron mining properties were in Iron County, Utah, near the town of Lund. They were extensive iron and coal properties and their peculiar quality lay in the fact they are the only coal properties so far discovered west of Colorado. No coal had been found in this part of the country from which coke could be made and you have to have a certain amount of that to make pig iron.

The properties just described were turned over by Mr. Creed. Mr. Creed had a contract on those properties with the various owners. One was with the old Columbia Steel holders to turn over their stock. Another was with Mr. Raznis, the representative of the coal people and the other was with

the people who owned the iron mine. As to whether a contract was entered into in the interest of all the old stockholders of Columbia Steel, I could not tell. Those contracts were entered into before I assumed my duties with the corporation but he was the only one named in these contracts.

Redirect Examination

On redirect examination the witness further testified:

Mrs. Koshland did not own any stock in the old Columbia Steel directly or indirectly and had no interest directly or indirectly in any of these [44] properties until she bought the 150 shares of preferred.

C. T. REDMOND

was called as a witness by and on behalf of the petitioner and having been first duly sworn testified as follows:

Direct Examination

I am the assistant secretary of the Columbia Steel Company. I have been employed by the Columbia Steel Corporation, the one we have just been referring to in the testimony of Mr. Sloss. I was first employed by the Columbia Steel Corporation in March, 1924 in the capacity of assistant auditor. I remained assistant for two or three years and then became assistant secretary. During the period from March, 1924 through the year 1928 I was in

(Testimony of C. T. Redmond.)

charge of the books of account of the Columbia Steel Corporation and they were kept under my supervision. I have here the original general ledger covering that period of time. I have the entries in the general ledger with respect to the dividends declared on the preferred stock in January, 1925. There is an entry in the general ledger in January, 1925 with respect to dividends declared on the preferred stock in the form of common stock. The entries show a charge to surplus as of January 31, 1925, and a credit to dividends payable. The charge to surplus represents a dividend in common stock on the preferred stock outstanding at the rate of $7.00 per share. The original records which I have in front of me show the number of shares of common stock with respect to which a dividend was paid on the preferred stock in January, 1925; that was 93,666.611 shares. The amount charged to surplus with respect to those shares is $655,666.28. That represents $7.00 per share on each share of common stock. The other entry was a credit to dividends paid. Further entries were made with respect to this transaction later. On January 31, 1925 an additional entry was made debiting dividends payable in the amount of $655,666.28, crediting common stock $655,417.00 and also crediting [45] acrued dividends payable of $249.28. The last two figures mentioned equal the full amount of the charge to surplus. There was a segregation of that small item of $249.28 because on the computation

(Testimony of C. T. Redmond.)

of the common stock dividend on odd shares at the rate of $7.00 there were fractional shares. These fractional shares were credited to the individual stockholders but not issued at that time. The original books of account of the Columbia Steel Corporation which I have here shows that the surplus of the company which was on hand on January 1, 1925 was $690,807.19. I will give you the same data with respect to the dividend declared on the preferred stock in the form of common stock in January, 1926. The entry as of January 31, 1926 shows a debit to surplus of $663,677.79, and a credit to dividends payable $663,677.79 an additional entry debiting dividends payable $663,677.79 and crediting common stock $663,621.00 and crediting accrued dividends payable $56.79. The explanation as to this little item of $56.79 is the same as that given by me with respect to the other small item for 1925. The records show that the number of shares issued at that time as dividend in common stock on the preferred stock was 94,811.113 shares at the rate of $7.00 per share, or a total of $663,-677.79. The original ledger shows that the surplus of the Columbia Steel Corporation on hand January 1, 1926 was $827,713.80. Turning now to the dividend declared and paid in January, 1927; a charge to surplus $690,233.10; credit dividends payable $690,233.10. The entry was made as of January 31, 1927. The further entry was made charging dividends payable of $690,233.10, and crediting common stock $689,234.00, and crediting accrued dividends